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# Book Review. Federal Environmental Law (E. Dolgin and T. Guilbert, eds.)

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benefit from discussing the issues he raises. The task is to present a more precise prescription for moving from the present to the resource-conserving future.

Stephen E. Roulac\*

FEDERAL ENVIRONMENTAL LAW. E. Dolgin & T. Guilbert, eds. St. Paul: West Publishing Co. 1974. Pp. xxxvii, 1600. \$25.00.

In *The Spirit of the Common Law*, Roscoe Pound summarized the modern conception of the relationship between law and social change:

A legal system attains its end by recognizing certain interests, individuals, public and social; by defining the limits within which these interests shall be recognized legally and given effect through the force of the state, and by endeavoring to secure the interests so recognized within the defined limits. It does not create these interests . . . they arise, apart from the law, through the competition of individuals with each other and the competition of individuals with such groups or societies.<sup>1</sup>

The recent emergence of environmental law well illustrates this process. In the past decade legislatures and courts have recognized a wide variety of environmental interests ranging from the protection of aesthetic values to the minimization of threats to human health and the stability of ecosystems. The recognition of environmental interests has been so rapid and comprehensive that the important issue today, despite our immediate preoccupation with energy shortages and unemployment, is not whether to consider environmental values at all but what weight to give them. This is the essential message of the 1600 pages of *Federal Environmental Law*.

*Federal Environmental Law* is not a conventional treatise but a collection of twenty-two essays on federal laws and programs. The essays<sup>2</sup> were written under the direction of the Environmental Law

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1. R. POUND, *THE SPIRIT OF THE COMMON LAW* 91-92 (1921).

2. The Chapters of *Federal Environmental Law* [hereinafter cited as FEL] are:  
The Constitutional Framework of Environmental Law  
The Impact of Federal Institutional Arrangements  
The Role of the Courts  
The National Environmental Policy Act  
The Federal Role in Technology Assessment  
Federal Procurement and the Environment

Institute, a public interest organization which publishes the *Environmental Law Reporter* and sponsors major research projects. The authors are a group of young (by the standards of a 35 year old reviewer), environmentally committed lawyers, many of whom have participated in litigation or other governmental processes involving the topics of their essays. Some have been employees of the agencies administering the programs they describe.

A work of scholarship which imposes order on the rapidly developing field of federal environmental law can perform three useful functions. First, federal legislative programs and the judicial decisions which interpret them can be systematically described and analyzed. Second, the recent judicial activism of the circuit and district courts particularly can be evaluated and placed in the perspective of traditional doctrines of constitutional and administrative law. Third, future resource use conflicts can be identified and the role of the legal system in structuring the process of decision explored. The Environmental Institute's primary objectives were to fulfill the first two functions, although, as Frederick Anderson's preface indicates, some attention was given to the third. This review will explore the Institute's success in meeting those goals.

Satisfying the first function—describing and analyzing the many federal programs—mandated the use of separate authors. I know of no one with the background to write in-depth on all of the topics. The number of piecemeal federal legislative programs is enormous—ranging from federal procurement practices to protection of “wild free-roaming horses and burros”—and the systematic description of them in one place is enough to justify publication of the book. The survey of federal energy programs<sup>3</sup> and the chapters on marine pollution,<sup>4</sup> coastal development<sup>5</sup> and water resources development<sup>6</sup> are particularly good exam-

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The Federal Lands

Wildlife Preservation Under Federal Law

The Control of Marine Pollution

The Federal Law of Water Pollution Control

The Federal Role in Coastal Development

The Federal Law of Water Resources Development

Energy

Radiation and the Environment

The Federal Law of Air Pollution Control

Noise: Emerging Federal Control

Federal Pesticide Law

Solid Waste and Resource Recovery

Federal Environmental Statutes and Transportation

National Land Use Policy

Protection of the Cultural Environment in Federal Law

Federal Law and Population Control

3. Stoel, *Energy*, FEL 928.

4. Lettow, *The Control of Marine Pollution*, FEL 596.

5. Power, *The Federal Role in Coastal Development*, FEL 792.

6. Hillhouse, *The Federal Law of Water Resource Development*, FEL 844. This

ples of the benefits of the multi-author approach. These are areas that have generally been treated elsewhere in a piecemeal fashion and the more comprehensive treatment ties together a great deal of information with some fresh perspectives on these important problems. Unfortunately, much of the useful information may be missed by those who do not read the book in its entirety or come to it with a good grasp of the subject matter for there is no index. The problems are often interrelated and the editors have provided some cross-references but the lack of an index is a major defect in the book.

Two long chapters cover the federal regulatory program for air and water pollution.<sup>7</sup> These two chapters should be of great interest to lawyers because their principal governing acts are technical and apply to many activities. Unfortunately the two chapters provide less guidance than most lawyers will want. In the case of the chapter on water pollution this is unavoidable because the application of the statutes will depend on the construction given them by EPA over the next few years. The chapter contains a very good survey of the legislative history of the Federal Water Quality Control Act of 1972<sup>8</sup> and a concise discussion of many crucial constructional problems that the EPA must resolve. The summary of the relevant legislative history will be an especially useful source of suggested approaches to defining many of the terms Congress intentionally left vague. In contrast to the younger water pollution effort, many important issues under the Clean Air Act of 1970<sup>9</sup> have been decided, such as the required implementation of a non-degradation policy, the procedures for informal rulemaking, and the procedures for contesting EPA decisions. These issues are discussed in the air pollution chapter but the analysis is insufficient to give the lawyer a useful framework for approaching these and other problems dealing with the application of the Act.

The chapter on federal regulation of pesticides<sup>10</sup> suffers from a different problem. This chapter would have been a good place to take up the problem of risk-benefit analysis. Instead, the chapter is a critique, in the best nineteenth century rule-of-law tradition, of the discretion delegated to the Environmental Protection Agency. Lawyers will find it an illuminating preview of many of the issues that may be litigated under the statute, but there is little discussion of the substantive standards

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Chapter contains the best discussion of judicial review of cost-benefit analysis in the book. See also Comment, *Judicial Review of Cost-Benefit Analysis Under NEPA*, 53 NEB. L. REV. 540 (1973).

7. Zener, *The Federal Law of Water Pollution Control*, FEL 682; Jorling, *The Federal Law of Air Pollution Control*, FEL 1058.

8. 33 U.S.C. §§ 1251 *et seq.* (Supp. III, 1973).

9. 42 U.S.C. §§ 1857 *et seq.* (1970).

10. Butler, *Federal Pesticide Law*, FEL 1232.

which EPA has developed in its hearings on the cancellation of pesticide production licenses. Contrary to the somewhat harsh tone of the chapter, the standards represent a significant recognition of environmental values and a liberalization of existing concepts of proof of harm.<sup>11</sup> The chapter's critical stance, while certainly historically justified, sometimes detracts from its effectiveness. The author frequently deplores the fact that the statute is the product of compromise between agricultural and environmental interests, but it would have been more helpful to examine the legislative history of the various sections to explain the product of this compromise. This could have saved the author from occasional misleading generalizations.<sup>12</sup> The author's major proposal for change in pesticide management is that the EPA should use a generic approach to regulation and cancellation of chemicals. This merits more discussion than the chapter offers. The statute seems to require that the benefits of each use of a pesticide are to be compared to its environmental and health costs and thus the same chemical may have a different cost-benefit ratio for different uses.

Surprisingly, none of these three chapters on federal regulatory programs gives much attention to the issue of what character and quantum of scientific information is necessary to support a regulation; yet this is one of the most difficult problems faced by the EPA. The failure to deal with the difficult legal question of standards for scientific proof posed by environmental litigation is one of the major weaknesses of the book. Many law suits now request the prohibition of an activity because it poses a risk of future harm. There is little consensus as to what level of risk must be established to authorize limitation of an ac-

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11. *But see* Comment, *Farmworkers in Jeopardy: OSHA, EPA, and the Pesticide Hazard*, 5 *ECOLOGY L.Q.* 69 (1975).

12. The Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. § 136 (Supp. III), prohibits EPA from making "any lack of essentiality a criterion for denying registration of any pesticide." *Id.* § 136a(c)(5). Mr. Butler states: "This phraseology was inserted at industry insistence to prevent EPA from denying a registration on the grounds that adequate alternatives already existed." Butler, *supra* note 10, at 1239. The legislative history indicates that this is only one possible interpretation of the term "essentiality."

The doctrine of essentiality has different meanings to different people. To some, it would forbid the registration of any pesticide if there exists an alternative which is just as safe and effective as that pesticide—since under those circumstances the pesticide is not 'essential' for the well-being of society. Under another reading, the doctrine merely mandates consideration of the availability of less hazardous substitutes as one of the interests to be balanced in determining whether a pesticide should be registered.

S. Rep. 970, 92nd Cong., 2d Sess. 7 (1972). EPA takes the position that the doctrine means only that it cannot deny a registration solely because another equally effective pesticide has been previously registered. The agency contends that the issue of alternatives is relevant in the cost-benefit analysis it makes to determine whether a pesticide should be registered or a registration canceled. See, *Environmental Defense Fund, Inc. v. EPA*, 510 F.2d 1292 (D.C. Cir. 1975) (Suspension of aldrin and dieldrin upheld).

tivity (especially when a threat to human health is not present), or as to what amount of proof is necessary to insure that the conclusion reached is not "speculative" and thus an insufficient basis to uphold a regulation or support an injunction.<sup>13</sup>

The book's failure to adequately fulfill the second function—an analysis of recent judicial activism—illustrates a disadvantage of the separate author approach, and of the organization of the book into functional units. In some instances the analysis of emerging doctrines and important cases benefits from being discussed in several different contexts. The discussion of the NEPA cases which attempt judicial review of cost-benefit analyses in the chapters on NEPA<sup>14</sup> and on water resources development<sup>15</sup> is a good example. However, in other instances the fragmentation of treatment by author and subject results in an inadequate analysis of major legal developments. The broader doctrinal significance of many important environmental law cases is missed and lawyers working with these cases in the future will find *Federal Environmental Law* of little help in suggesting lines of analysis and in pointing out arguments that must be overcome.

Grant Thompson's chapter, "The Role of the Courts,"<sup>16</sup> only partially corrects this problem by an overview of the new administrative law. Traditionally relief against administrative action alleged to be arbitrary has been granted only to those persons affected in a manner distinct from the general public. In Professor Jaffe's phrase, non-Hohfeldian interests were not recognized.<sup>17</sup> In recent years administrative action which affects all members of the public more or less equally has been subject to increased judicial control through the expansion of standing (although the fiction of pleading distinct injury is still required) and the imposition of new standards to structure the process of decisions which have traditionally been considered unreviewable, such as informal rulemaking. Judicial review generally takes the form of the imposition of increased procedural requirements on decisionmaking bodies. The extent to which such new procedural standards ultimately constrain an administrator in making a decision is not clear. Constraints are, however, being imposed in a variety of ways and this process is

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13. Compare *United States v. Reserve Mining Co.*, 514 F.2d 492 (8th Cir. 1975), with *Ethyl Corp. v. EPA*, 7 ERC 1353 (D.C. Cir. 1975), vacated and set for argument before court sitting en banc, 7 ERC 168 (D.C. Cir. 1975). See generally Gelpe & Tarlock, *The Uses of Scientific Information in Environmental Decisionmaking*, 48 S. CAL. L. REV. 371 (1974).

14. Anderson, *The National Environmental Policy Act*, FEL 192.

15. Hillhouse, *supra* note 6.

16. Thompson, *The Role of the Courts*, FEL 192.

17. Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. R. 1033 (1968).

working a significant change in the doctrines of administrative law which, since the New Deal, have all been premised on confining judicial intervention.

The primary focus of "The Role of the Courts" is on "the strict requirements for a full administrative record which have developed for informal agency rulemaking generally and for informal rulemaking in environmental cases in particular."<sup>18</sup> Judicial review of informal administrative action is the most rapidly developing area of administrative law due to the large amount of environmental and consumer protection litigation. The chapter quickly passes over the difficult question of how much informal action should be reviewed by accepting the question begging argument of the courts that a full record is necessary for effective judicial review. Since Justice Marshall's opinion in *Citizens to Preserve Overton Park v. Volpe*<sup>19</sup> declared that the informal action can be reviewed, the important and proper question concerns the standards and scope of that review.

In *Overton Park* the Supreme Court reviewed the Secretary of Transportation's decision to approve federal funding of a highway which would run through a public park. Section 4(f) of the Transportation Act<sup>20</sup> prohibits such locations unless no feasible and prudent alternative exists. Thompson's discussion of *Overton Park* correctly emphasizes that the Court interpreted section 4(f) of the Transportation Act, which seemed to delegate considerable discretion in highway route selection to the Secretary of Transportation, as a statute in which the values to be weighed by the Secretary had been ranked by Congress. Thus the precedential value of *Overton Park* is limited when applied, for instance, to cases involving review under NEPA since the statute is drawn much more broadly than section 4(f) of the Transportation Act.<sup>21</sup> Other authors in the book pass over these problems too lightly. They unjustifiably assume that *Overton Park* requires review of informal action where the delegated discretion is significantly broader.<sup>22</sup>

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18. Thompson, *supra* note 16, at 195.

19. 401 U.S. 402 (1971).

20. 49 U.S.C. § 1653(f) (1970).

21. See Leventhal, *Environmental Decisionmaking and the Role of the Courts*, 122 U. Pa. L.R. 509, 512-14, 520 (1974).

22. See Guilbert, *Wildlife Preservation Under Federal Law*, FEL 551, 566-68. Discussing recent litigation under the Multiple-Use, Sustained Yield Act, the author cites an unpublished Ninth Circuit Memorandum which states that since *Overton Park*, the Forest Service must give due consideration to ecological values in making decisions under the Act. The author asserts that if the agency alleges that it has considered adverse impacts on wildlife "but there is strong evidence that it has ignored or dismissed a preponderance of ecological opinion in favor of other factors, *Overton Park*, and the Ninth Circuit's nonprecedential 'memorandum' in *Sierra Club v. Butz*, No. 71-2514, 3 ELR 20292 (9th Cir. 1973) suggests that this constitutes an abuse of discretion." *Id.* at 568.

The chapter most directly concerned with the decision, "Federal Environmental Statutes and Transportation," contains a discussion of the legislative history and the administrative implementation of section 4(f) and the construction placed on it by the Court in *Overton Park* but no general discussion of the impact of the decision.<sup>23</sup>

Thompson's chapter could have been supplemented by a planned chapter on citizen involvement in administrative proceedings and judicial review. Unfortunately the chapter was not finished in time to be included. One of the most distinctive contributions of administrative law, as illustrated by writings of Sax and others,<sup>24</sup> has been to justify the use of parties not specially affected by a decision as overseers of the administrative and, to a lesser extent, the legislative process. The planned chapter would have been a significant opportunity to identify some of the potentially lasting contributions of environmental law by placing recent developments in a broader context.

The book could have been much improved by a stronger effort to fulfill the third function—the identification and analysis of future resource use conflicts. The two chapters most in need of a projective treatment are those on technology assessment<sup>25</sup> and national land use policy.<sup>26</sup> Technology assessment is just emerging as a discrete field of inquiry and there are fascinating problems ranging from philosophical questions about our ability to humanize technology to more technical questions about the placement of the burden of proof. Speth's chapter covers well the tentative federal efforts in this direction and major technology assessment litigation to date. However, his call for an independent technology assessment agency is a rather sterile solution to a much more complex problem. Happily, William Lake's chapter, "Noise: Emerging Federal Control,"<sup>27</sup> is a model technology assessment case study and is useful reading for those interested in problems other than noise.

The problem of land use regulation is of a different order than that of technology assessment. An elaborate body of land use regulation now exists. Conventional zoning and subdivision regulations have traditional-

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This may be a good argument for an environmental plaintiff, but it represents a significant extension of *Overton Park*. The Multiple-Use, Sustained Yield Act of 1960, 16 U.S.C. §§ 528-31 (1970) is significantly different from section 4(f) because the delegated discretion is much less structured and thus the case posed by the author can be easily distinguished from *Overton Park*.

23. Vardaman, *Federal Environmental Statutes and Transportation*, FEL 1316, 1370-88.

24. See, e.g., J. SAX, *DEFENDING THE ENVIRONMENT* (1971); Jaffe, *supra* note 17.

25. Speth, *The Federal Role in Technology Assessment and Control*, FEL 420.

26. Reilly, *National Land Use Policy*, FEL 1414.

27. Lake, *Noise: Emerging Federal Control*, FEL 1150.



ly had limited environmental and consumer protective objectives as they have been premised on the assumption that growth will occur and the role of the law is to guide it gently by coordinating private and public choices. Environmental land use regulation on the other hand seeks to withdraw land from development and preserve ecologically sensitive areas (such as shorelines), thereby channeling growth into sharply compressed corridors. These objectives are a radical departure from those of traditional land use control and present a host of new problems for the lawyer. Environmental objectives also conflict with other social policies such as the provision of housing opportunities for low and moderate income families,<sup>28</sup> and to complicate matters further, it is not possible to establish uniform environmental standards for land use, by using concepts such as the "carrying capacity" of land, as has been done with air and water pollution. Somehow on top of this existing structure of regulation a new superstructure must be imposed. It is unlikely that federal or state governments will take over all local land development regulation, but, some redistribution of power to higher levels of government is required. There is already a growing body of special purpose land regulation at the state level, such as power plant siting procedures, and these must be meshed with new forms of general land use regulation.

William Reilly's chapter, "National Land Use Policy," is a sensitive introduction to these problems. Conventional land use controls are contrasted with newly emerging theories through discussion of the tortuous progress of national land use planning legislation, EPA's tentative steps into planning, and the American Law Institute's proposed Model Land Development Code.<sup>29</sup> The chapter makes a substantial contribution to the literature by examining the increasingly used but little understood concept of "critical areas."<sup>30</sup> However, the chapter merely brushes the surface of land use problems and must be considered a brief introduction.

One problem which Reilly's chapter neglects is the tension between traditional theories of planning and the adjudicatory thrust of much environmental legislation along with judicial constructions of that legislation. In theory, planning is a process which makes major allocation choices in advance of a specific conflict. By contrast environmental litigation involves a detailed review of a specific allocation choice. It is often alleged that lawsuits are necessary because prior planning has been insufficiently comprehensive or sensitive to environmental problems,

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28. See Tarlock, *Book Review*, 83 YALE L.J. 637 (1974).

29. ALI, MODEL LAND DEVELOPMENT CODE (Tent. Drafts 1-6, 1968-74).

30. Reilly, *supra* note 26, at 1449-61; see Mandelker, *Critical Area Controls: A New Dimension in American Land Development Regulation*, 41 AIP J. 21 (1975).

and that the litigation will force agencies to do their jobs properly. Instead, the litigation has sometimes encouraged a tendency to rely on a judicial solution. As Charles Reich observed in his classic study, "The Law of Planned Society,"<sup>31</sup> the use of ad hoc balancing decisions results in the consideration of a narrower range of factors than would be considered in devising a comprehensive plan. There is, however, widespread distrust of administrative decisionmaking and little confidence in the ability of the legislatures in this area. Thus the judiciary is being increasingly relied upon to resolve environmental issues and states have attempted to split the planning process into legislative and judicial components. For example, many states experimenting with "critical areas" legislation allow general guidelines to be established by rulemaking but require adjudicatory procedures when the guidelines are applied to specific tracts.<sup>32</sup> This split simply preserves the fundamental tension between planning and the case-by-case balancing that is at the heart of NEPA litigation.<sup>33</sup> Ultimately this approach to conflict resolution will have to be harmonized with the loose theories of comprehensive planning that underlie much of the new state and proposed federal land use controls legislation.<sup>34</sup>

A major element of national land use policy will be the coordination of federal management of public lands with the use of privately and state owned lands. Jerome Muys's chapter, "The Federal Lands,"<sup>35</sup> is a starting point for understanding the issues that will arise in this effort. In addition to accurately summarizing the myriad of public land classifications, the chapter concentrates on the Report of the Public Land Law Review Commission.<sup>36</sup> The Commission's report coincided with the first wave of environmental power and its comprehensive perspective has often been ignored. Mr. Muys's thesis that "the Commission's report presents the only reasonably coherent, comprehensive, and balanced starting point available for initiating long overdue [reform]"<sup>37</sup> is worth considering. The land use chapters are supplemented by Elliott's "Federal Law and Population Control."<sup>38</sup> The chapter is a concise and lucid but wide-ranging summary of current methods of population control

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31. Reich, *The Law of Planned Society*, 75 YALE L.J. 1227 (1966).

32. See Mandelker, *supra* note 30.

33. This tension is well described in J. SAX, *DEFENDING THE ENVIRONMENT* 100-107 (1971).

34. See, e.g., *Fasano v. Board of County Comm'n*, 264 Ore. 574, 507 P.2d 23 (1973).

35. Muys, *The Federal Lands*, FEL 492.

36. PUBLIC LAND LAW REVIEW COMM'N, *ONE THIRD OF THE NATION'S LAND* (1970).

37. Muys, *supra* note 35, at 544.

38. Elliott, *Federal Law and Population Control*, FEL 1518.

and their relationship to environmental management strategies. Both macro- topics, such as federal immigration policy and the debate over what is an optimum level of world as well as national population, and micro- topics, such as voluntary and compulsory sterilization, are covered. The discussion of the role of federal and state governments in influencing population distribution is the most interesting part of the chapter, for it breaks new ground. The chapter raises the various constitutional issues, such as the basis of the right to travel, which will arise if there are direct efforts to control where people can live in the name of resource conservation and amenity preservation, but the discussion stops short of thorough analysis. For example, more discussion of control of resource use and access as a means of influencing population distribution would have been helpful.

To end on a positive note, I can say that two chapters are first rate in every respect. A detailed critique of Professor Philip Soper's chapter, "The Constitutional Framework of Environmental Law,"<sup>39</sup> and Frederick Anderson's, "The National Environmental Policy Act,"<sup>40</sup> would require separate reviews of their own. Both chapters are outstanding examples of scholarship. Many lawyers will be familiar with Mr. Anderson's chapter as it is partially a condensation and revision of his excellent book *NEPA in the Courts*.<sup>41</sup> It is also an extension of his book since the chapter has a significant new emphasis. "[T]aking his cue from Judge Wright's review of the book, the author has emphasized the institutions which implement NEPA, the outer limits of the new authority conferred upon the agencies by NEPA, the fullness of the agency's consideration of the impact statement (once it is clear that a statement of an appropriate scope must be prepared), and the conformance of the agency's actual decision to proceed with NEPA's substantive provisions."<sup>42</sup> "The Constitutional Framework of Environmental Law" is an exhaustive analysis of constitutional issues from the obvious to the obscure. Two important questions which are considered are the distinction between a police power regulation and a taking, and the recognition of fundamental environmental rights. One will not always agree with Soper's analysis, but I think the reader will find it consistently insightful, even on problems which ordinarily defy analysis in less than a separate volume.

If *Federal Environmental Law* is not the comprehensive overview and analysis that many of us would like, it is still a very worthwhile effort. The major defects are its uneven quality and an overlapping and

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39. Soper, *The Constitutional Framework of Environmental Law*, FEL 20.

40. Anderson, *The National Environmental Policy Act*, FEL 238.

41. F. ANDERSON, *NEPA IN THE COURTS* (1973).

42. Anderson, *The National Environmental Policy Act*, FEL 238, 241.

fragmented treatment of many problems. On balance these defects are outweighed by its comprehensiveness, wealth of useful information, and its several excellent chapters.

*A. Dan Tarlock\**

**CLEARING THE AIR: FEDERAL POLICY ON AUTOMOTIVE EMISSIONS CONTROL.** By Henry D. Jacoby, John D. Steinbruner, *et. al.* Cambridge, Mass.: Ballinger Publishing Company. 1973. Pp. xvii, 215. \$15.00.

**ECONOMICS AND PUBLIC POLICY: THE AUTOMOBILE POLLUTION CASE.** By Donald N. Dewees. Cambridge, Mass.: MIT Press. 1974. Pp. x, 214. \$18.50.

The standards, deadlines, and enforcement methods established by the 1970 Amendments to the Clean Air Act<sup>1</sup> for the control of motor vehicle emissions continue to generate controversy. Two studies reviewed here fault the present policy of strict standards and prohibitory fines, and recommend that the Clean Air Act be further amended to establish a schedule of fines large enough to stimulate technological improvements but small enough not to stop vehicle production. After summarizing and comparing these studies' estimates of the costs and benefits of emissions controls, of the cost-effectiveness of alternative control strategies, and their proposals for reform, this review will suggest how the present language of the Amendments could support a *de facto* emissions tax program without additional legislation.

#### I. THE COST OF MOTOR VEHICLE AIR POLLUTION

What price does the nation pay for air pollution damage from motor vehicles? In Jacoby's and Steinbruner's view the health cost falls within one order of magnitude—between \$2.1 and 21 billion per year (1967).<sup>2</sup> Dewees is somewhat more confident, and more conservative, in estimating a range of \$1.3 to 3.4 billion per year (1970).<sup>3</sup> Dewees

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1. 42 U.S.C. § 1857 *et seq.* (1970), as amended, 42 U.S.C.A. § 1857 *et seq.* (Supp. 1975).

2. H. JACOBY & J. STEINBRUNER, *et al.*, **CLEARING THE AIR: FEDERAL POLICY ON AUTOMOTIVE EMISSIONS** 203 (1973) [hereinafter cited as **CLEARING THE AIR**].

3. D. DEWEES, **ECONOMICS AND PUBLIC POLICY: THE AUTOMOBILE POLLUTION CASE** 34 (1974) [hereinafter cited as **ECONOMICS AND PUBLIC POLICY**].